



US Army Corps  
of Engineers  
Rock Island District

# PUBLIC NOTICE

Proponent: U. S. Army Corps of Engineers

Date: June 23, 2010

Expires: July 22, 2010

CEMVR-OD-P-2010-0207 – Regional Permit 34

Section: 404

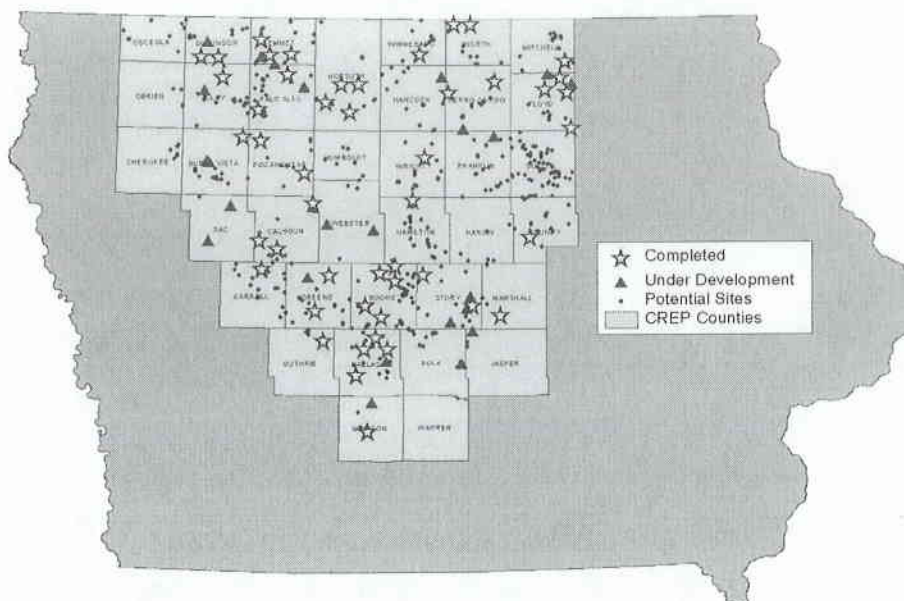
Joint Public Notice  
US Army Corps of Engineers  
Iowa Department of Natural Resources

**Re-issuance of Regional Permit 34  
Conservation Reserve Enhancement Program (CREP) Structures  
In Waters of the United States  
In the State of Iowa**

1. **Proponent.** U. S. Army Corps of Engineers (Corps), Rock Island District, Clock Tower Building, Post Office Box 2004, Rock Island, Illinois 61204-2004.

2. **Project Location.** The individual projects to be authorized under this Regional Permit will be located in the upper watershed reaches in a 37-county area including Boone, Buena Vista, Butler, Calhoun, Carroll, Cherokee, Clay, Cerro Gordo, Dallas, Dickinson, Emmet, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Humboldt, Jasper, Kossuth, Madison, Marshall, Mitchell, Palo Alto, Pocahontas, Polk, O'Brien, Osceola, Sac, Story, Warren, Webster, Winnebago, Worth, and Wright Counties, Iowa.

Current Iowa CREP - Nitrate Removal Wetlands



**NOTE:** If a project is on a stream listed on the Special Waters of Iowa list, coordination with the Iowa Department of Natural Resources must occur and appropriate measures deemed necessary to protect the integrity of Special Waters must be included in the project plans before authorization under the regional permit is issued.

3. **Project Description.** This regional permit, initially issued on September 14, 2006, will expire on December 31, 2010. There were 19 individual projects authorized under this Regional Permit 33 between the period September 14, 2006, and December 31, 2009. Rock Island District proposes to re-issue the regional permit for a period of 5 years to begin January 1, 2011. This regional permit will be valid until December 31, 2015. This Regional Permit will authorize the placement of fill materials in waters of the U.S. to create wetlands and ponded water through the construction of earthen embankments and/or dams when funding or technical assistance is being provided through Conservation Reserve Enhancement Program (CREP) and when the Farm Service Agency (FSA) is the lead Federal agency.

a. **Purpose.** The primary purpose of the projects is to improve water quality by limiting the amount of agricultural pollutants (mainly nitrates) entering the nation's rivers and ultimately, the Gulf of Mexico. The earthen embankments will slow storm water and agricultural drain tile water runoff which will allow a large percentage of nitrates to fall out and break down before they enter larger waterways. Other benefits include erosion control and wildlife habitat.

b. **Specifications / Restrictions.** These general specifications / restrictions must be met for all individual projects to be authorized under this regional permit.

(1) The Department of Agriculture's Farm Service Agency (FSA) must be the Lead Federal Agency for all projects authorized under this Regional Permit.

(2) The projects will be constructed on small streams and waterways with drainage areas of 4,000 acres or less.

(3) The structures will be strategically located and designed to pool tile drainage water which will remove nitrates and herbicides from that water.

(4) The typical size of the pool that will form above the structure will be between ½ and 2 percent of the size of the watershed.

(5) CREP criteria requires water depths of 3 feet or less in at least 75 percent of the pool.

(6) The area between the maximum flood pool elevation and the normal pool elevation will be vegetated in grass. With the exception of structures and steep slopes, all areas without an established vegetative cover will be seeded to native grasses.

(7) Specific criteria for use in designing the CREP structures are found in the *Iowa Field Office Technical Guide* on the web at <http://www.ia.nrcs.usda.gov/technical/permitmaterials.html>. Standards 378 and 410 are pertinent. Additional criteria for the design of dams are found in *Technical Release 60, Earth Dams and Reservoirs*. This Technical Release may also be found on the web at <http://www.ia.nrcs.usda.gov/technical/permitmaterials.html>.

(8) This Regional Permit authorizes all activities related to the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, CREP structure or fill provided that the structure or fill is not to be put to uses differing from those originally specified. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. This permit does not authorize new stream channelization or stream relocation. This permit does not authorize more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increased flooding.

(9) Any spoil material excavated, dredged or otherwise produced by the activity will not be returned to the waterway but will be deposited in an upland area or in non-wetland areas within the proposed pool area.

(10) Clearing of vegetation, including trees located in or immediately adjacent to waters of the U.S., shall be limited to that which is absolutely necessary for construction of the project. All vegetative clearing material shall be removed to an upland, non-wetland disposal site.

(11) Where project plans include armoring, acceptable material will include clean: riprap, field stone, quarry rock, and broken Portland Cement Concrete (PCC). When using broken PCC, all exposed reinforcing steel rod or mesh must be completely removed. If removal is not possible, the reinforcement material shall be cut flush with the surface of the concrete prior to placement. It shall be the permittee's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The use of asphalt or other solid waste is not authorized.

(12) If, at the discretion of the District Engineer, corrective measures are deemed necessary to protect the public interest before, during, and after completion of project construction, permittees shall complete such corrective actions as directed by the District Engineer on a case-by-case basis.

(13) No work on the project may commence on any portion of the project under this regional permit until project specific authorization has been issued by the Corps.

c. **Mitigation:** The wetland mitigation actions contained in the project plans must be implemented/completed concurrently with the project construction.

(1) Practicable measures must be taken to avoid and minimize adverse impacts to waters of the United States by both temporary and permanent fills. Mitigation for unavoidable adverse impacts to waters of the U.S. must be adequate to offset lost functions. Unavoidable wetland losses will typically be fully replaced in the 75 percent of the pool with water depths of 3 feet or less. It is expected that most of the pool area with water depths of 3 feet or less will develop emergent wetland characteristics. Additional wetland mitigation is required if the acreage of wetland impacted by the structure and deep water exceeds the proposed acreage of pool with water depths of 3 feet or less. Additional wetland mitigation may also be required for out-of-kind mitigation. The Corps will determine if the proposed mitigation is adequate.

(2) All mitigation must be completed prior to or concurrent with project construction. If mitigation is required beyond what is provided in the shallow areas of the pool, it may include:

- a) Increasing the size of shallow water areas with excavation or raising the height of the structure to create conditions conducive to wetland development and establishment of desirable wetland vegetation (Successful wetland mitigation requires inundation of 2 feet or less and/or soil saturation within 12 inches of the surface for at least 14 days of the growing season);
- b) Creating or restoring wetland at another location;
- c) Lining shallow water areas in the pool with hydric soils;
- d) Providing native wetland seedlings/plantings in shallow parts of the pool and/or in areas that will be saturated within 12 inches of the surface;
- e) Increasing the width of the native upland buffers around the pool and mitigation wetlands;
- f) Fencing the pools to protect the mitigation wetlands, the shoreline, and the upland buffers from livestock disturbance;
- g) Leaving woody vegetation standing in pools to provide temporary fish and wildlife habitat;
- h) Enhancing/protecting the stream below the structure and/or nearby streams with bank stabilization, plantings, stream bed stabilization, riffles, or other habitat structures/improvements, etc.
- i) Or other measures appropriate to the site conditions. More mitigation guidance can be found in the Federal Register (see 33 CFR 332) dated April 10, 2008, which contains "**Compensatory Mitigation for Losses of Aquatic Resources**" (the Mitigation Rule). The guidelines can be found on the US Army Corps of Engineers web site. Go to [http://www.usace.army.mil/cecw/pages/final\\_cmr.aspx](http://www.usace.army.mil/cecw/pages/final_cmr.aspx) and click on "Final Rule".

If, in the opinion of the Corps of Engineers, mitigation areas do not fully replace the aquatic functions that will be lost due to the installation of the structure or project features, further mitigation measures may be deemed necessary on a case-by-case basis. To insure that there is no net loss of aquatic functions and values, additional project specific mitigation at either the project location or an alternative location within the same watershed may be required prior to issuance of authorization under this Regional Permit.

d. **Permit Conditions.** Applicable general conditions from the standard individual Department of the Army permit will be included as conditions of this regional permit.

e. **Water Quality Certification.** Any conditions listed in the Section 401 water quality certification from the Iowa Department of Natural Resources will be considered to be part of this regional permit.

f. **Permit Duration.** Department of Army authorization for the projects under this Regional Permit will be effective upon receipt of written, project specific verification of the authorization from the Corps of Engineers and generally will be valid for three (3) years.

g. **Maintenance and Reversion.** This Regional Permit also authorizes any future discharge of dredged or fill material associated with periodic maintenance and the reversion of the permit area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) for a period specified in the Iowa Conservation Reserve Enhancement Program Easement executed between the Soil and Water Conservation District and the landowner even if the original construction of the structure did not require a Department of the Army permit or the permit as expired. The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity, the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps' regulatory requirements will be at that future date.

#### 4. Agency Review.

a. Department of the Army, Corps of Engineers. The Department of the Army regional permit is being processed under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

b. State of Iowa. The proposed regional permit has been submitted to the Iowa Department of Natural Resources for state certification of the proposed work in accordance with Section 401 of the Clean Water Act. The certification, if issued, will express the Department's opinion that the proposed activity will comply with Iowa's water quality standards (Chapter 61 IAC). The applicant has also applied for authorization of work in the floodplain pursuant to Chapter 455B of the Iowa Code and other applicable state permits. Written comments concerning possible impacts to waters of Iowa should be addressed to: Iowa Department of Natural Resources, 900 East Grand Avenue, Des Moines, Iowa 50319. A copy of the comments should be provided to the Corps of Engineers office (see paragraph 11. of this public notice for address).

#### 5. Historical/Archaeological.

a. As Lead Federal Agency, FSA will fulfill the collective responsibilities set forth in the National Historic Preservation Act (NHPA) and will achieve compliance with Section 106 of the NHPA utilizing established agency procedures and processes. Authorization under this Regional Permit is not considered effective until Section 106 compliance is achieved. As Section 106 compliance should not be duplicated by agencies, the Corps of Engineers will accept the lead Federal agency's (FSA) compliance with the requirements of the NHPA. Compliance with NHPA will be considered complete when FSA completes the 106 process and provides written documentation of its compliance to the U.S. Army Corps of Engineers' Rock Island District office.

b. If construction work uncovers an item or items that may be of historic or archaeological interest or if important new historical data comes to light in the project area, the work must be delayed sufficient time to notify the U.S. Army Corps of Engineers, Rock Island District, Clock Tower Building, Post Office Box 2004, Rock Island, Illinois 61204-2004 (telephone 309/794-5384) and the State Historical Society of Iowa, Bureau of Historic Preservation, Historical Building/Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-8744) and to allow the significance of the discovery to be determined. The permittee may be held responsible for cost associated with identification and recovery.

**6. Endangered Species.**

- As lead Federal agency, the FSA will fulfill the collective responsibilities set forth in the Endangered Species Act (ESA) and will achieve compliance with that Act. This permit does not authorize the take of an endangered species. In order to legally take a listed species, separate authorization under the ESA is required. If authorization under the ESA contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with an "incidental take", such terms and conditions become part of this permit. Failure to comply with the ESA terms and conditions would constitute an unauthorized take, and would also constitute non-compliance with this permit. This permit is not considered effective until ESA compliance is achieved. As ESA compliance should not be duplicated by agencies, the Corps of Engineers will accept the lead Federal agency's (FSA) compliance with the requirements of that Act. Compliance with the ESA will be considered complete when FSA completes the necessary Section 7 compliance process and provides documentation of said compliance to the U.S. Army Corps of Engineers' Rock Island District office.
- The Farm Service Agency prepared a Programmatic Biological Assessment for the Conservation Reserve and Enhancement Program for Central Iowa. By letter dated February 24, 2006, the United States Department of the Interior, Fish and Wildlife Service, stated that consultation outlined in the request was complete.

**7. Dredge/Fill Material Guidelines.** The evaluation of the impact of the proposed activity on the public interest will also include application of the guidelines promulgated by the Administrator of the United States Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (40 CFR Part 230).

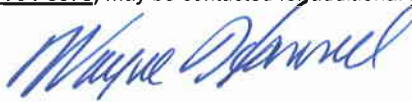
**8. Public Interest Review.** The decision whether to extend the regional permits will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

**9. Who Should Reply.** The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. These statements should be submitted on or before the expiration date specified at the top of page 1. These statements should bear upon the adequacy of plans and suitability of locations and should, if appropriate, suggest any changes considered desirable.

**10. Public Hearing Requests.** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided.



11. **Reply to the Corps of Engineers.** Comments concerning the Corps permit should be addressed to the District Engineer, U. S. Army Corps of Engineers, Rock Island District, ATTN: OD-P (Wayne Hannel), Clock Tower Building - Post Office Box 2004, Rock Island, Illinois 61204-2004. **Mr. Wayne Hannel (309/794-5378)** may be contacted for additional information.



Attach  
Plan

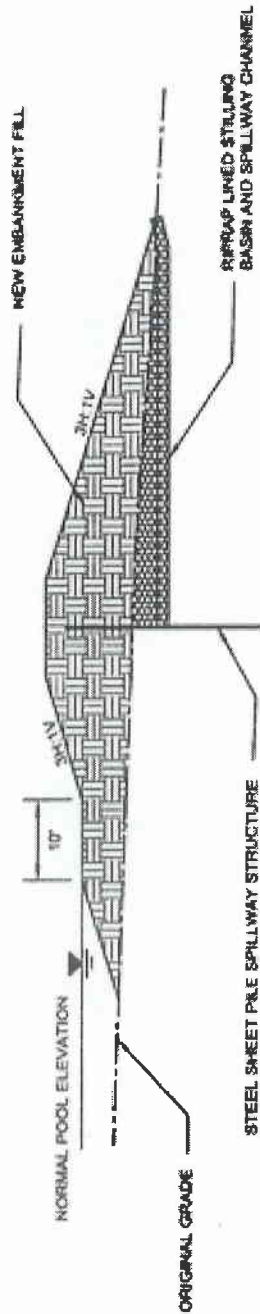
Wayne Hannel  
Project Manager  
Regulatory Branch

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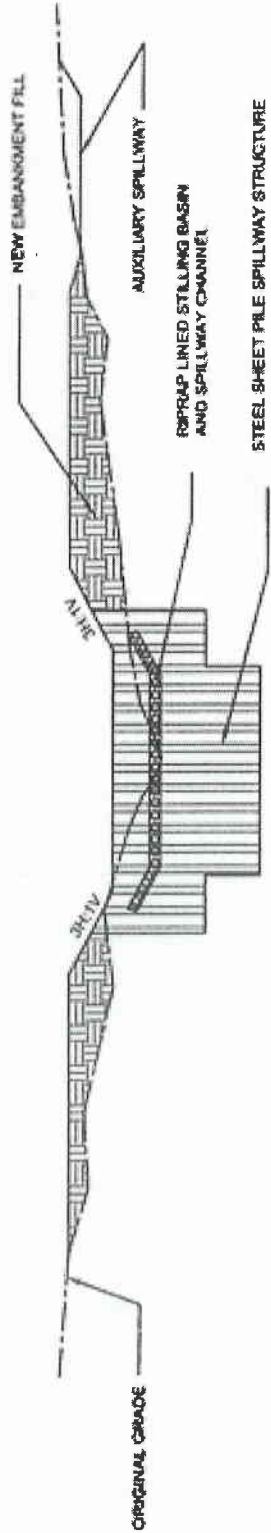
**REQUEST TO POSTMASTERS:** Please post this notice conspicuously and continuously until the expiration date specified at the top of page 1.

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TYPICAL CROSS SECTION OF EMBANKMENT AT SPILLWAY STRUCTURE



TYPICAL CROSS SECTION OF WATERWAY AT SPILLWAY STRUCTURE